

**Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554**

In the Matter of)	
)	
2000 Biennial Regulatory Review of Part 68 of)	CC Docket No. 99-216
)	
the Commission's Rules and Regulations)	

COMMENTS

Pursuant to Section 1.415 of the Commission's Rules (47 C.F.R. § 1.415) ACIL¹ hereby submits these Comments in response to the FCC's Notice of Proposed Rulemaking ("NPRM") in the matter of the 2000 Biennial Regulatory Review of Part 68 of the Commission's Rules and Regulations released May 22, 2000 (CC Docket 99-216, FCC 00-171).

**1. In Today's New Technologies Environment, The Need For Technical Criteria
To Protect The Network Is Crucial**

With regard to paragraphs 14-16 of the NPRM, ACIL supports the comments of industry experts submitted to the Commission in the 1999 public fora on Part 68 deregulation². ACIL supports the Commission's finding that all four of the types of

¹ ACIL is the trade association of the independent testing, certification and accreditation industry, representing over 300 test organizations, several of which have been testing products to the requirements of FCC Part 68 since the inception of the program.

² *Part 68 Fora*, Federal Communications Commission Public Fora on Deregulation/Privatization of Equipment Registration and Telephone Network Connection Rules, July 12-13, 1999.

harm³ to the network are still as valid today as they were 25 years ago. In fact, with the co-location of new technologies in the local loop, it is actually crucial to protect the network from interferences between the legacy services and the new services, both present and future. Part 68 contains technical criteria for precisely this purpose and, since Part 68 has just undergone a comprehensive streamlining process as a result of the Harmonization with the Canadian Standard CS-03, there are neither redundant nor obsolete criteria to be discarded in the current Part 68.

2. If The Formulation Of Technical Requirements Is Delegated To The Private Sector, The FCC Must Maintain A Strong Arbiter Role In The Process In Order To Ensure Equity And The Balancing Of Competing Interests

With regard to paragraphs 17-20 of the NPRM, ACIL supports the use of ANSI-accredited Standards Development Organizations ("SDO") to perform the primary function of formulating the technical requirements for network protection. These bodies possess the expertise necessary to develop technical criteria. However, ACIL urges the Commission to retain the control over the adoption of any network harm standard thus developed, because only the Commission would have the impartiality to perform the necessary balancing of competing interests in ensuring that the adopted set of technical requirements benefit the industry as a whole and not any segment of the industry in particular.

3. Any Adopted Technical Requirements Must Have The Force Of Law To Ensure Universal Adoption And Adherence

With regard to Paragraphs 21 and 22 of the NPRM, ACIL strongly believes that it is crucial for any set of Network Protection Technical Requirements to have

³ Historically, Part 68 was based on (4) broad types of harm:

1. Protection of Telephone Company's Personnel
2. Prevention of Damage to Telephone Company's Equipment
3. Prevention of Malfunction of Telephone Company 's Billing Equipment
4. Prevention of degradation of service to Third Parties

the force of law that only the Commission can bestow. There are many voluntary standards in the market. Since they are “voluntary”, they are adhered to when benefit to the organization is demonstrated. If they are a hindrance or delay to the introduction of a product, adherence to the requirements would undoubtedly take a back seat. ACIL believes that most responsible manufacturers would design their products according to industry standards; however, other not so responsible manufacturers may forego compliance altogether if this step adds cost and time delay to the introduction of the product in the marketplace. This will create competitive disadvantages to the entities who “follow the rules and do the right thing”. On the other hand, if one uniform set of requirements is being upheld with the force of law, *the playing field is level for all*.

4. The Network Harm Technical Requirements Can Be Formulated By Any Number Of Standards Development Organizations (“SDO”), Provided That There Will Be One Gatekeeper Entity Who Will Ensure That No Contradictory Requirements Exist In Any One Area

With regard to paragraph 23 of the NPRM, ACIL believes that the Commission should allow more than one SDO to develop the network harm technical requirements, as long as there is a means for ensuring that in any one area, there is no contradictory requirement that would cause vested interested parties to “pick and choose” the requirements for product compliance. This safeguard can be in the form of a gatekeeper organization, such as one vested with the responsibilities as outlined under the Federal Advisory Committee Act (FACA)⁴. With regard to the FCC’s three options for relying on private development of technical criteria to ensure that CPE connected to the PSTN does

⁴ 5 U.S.C. App. 2; 41 C.F.R. §§ 101-6.1001 to 101.6-1035 (GSA Federal Advisory Committee Management Regulations).

not cause harm⁵, ACIL would recommend the adoption of Option B⁶ which will allow the most flexibility to manufacturers. Several SDOs will be allowed to develop network protection technical criteria; however, the gatekeeper SDO, designated by the Commission, would ensure that no contradictory requirements exist in any one area. Again, ACIL reiterates its belief that only the FCC, vested with the public interest at heart, can impartially review the process under which technical regulations are adopted. The Commission can choose any means necessary to ensure the public interest, either by actively participating in the technical development process or supervising the review process. ACIL encourages the FCC to develop a joint public-private sector working group, in the example of the Canadian model Technical Attachment Program Advisory Committee ("TAPAC"), that will include accrediting organizations, telecommunications service providers, testing laboratories, current and prospective telecommunications certification bodies and manufacturers, in order to facilitate the transition to private certification and to foster the formulation and interpretation of future technical rules. This model is in some ways a simplified version of a Federal Advisory Committee ("FAC") but with streamlined procedures. The reason for the TAPAC model's success and effectiveness has been the fact that it is chaired by the Government and provides a matrix of voting that is balanced among all of the materially affected interests.

5. SDOs Accredited Under The ANSI Canvass⁷ Method Do Not Have Sufficient Open And Fair Representation Of Cross-Sections Of The Industry

In paragraph 45 of the NPRM, the Commission requests comment on whether requiring an SDO to be ANSI-accredited is sufficient to ensure fairness in

⁵ NPRM at 23

⁶ NPRM at 23, 58-60.

⁷ These procedures are available from the World Wide Web site for American National Standards Institute (URL <http://www.ansi.org>). They are titled "Procedures for the Development and Coordination of American National Standards". Reference section 2.1.3

the establishment of technical criteria. ACIL believes that all interested parties should be allowed to participate in the initial drafting and development of a Network Protection standard, regardless of voting or membership status. ACIL believes that the ANSI procedures are sufficient to ensure fairness in the establishment of Network Protection Technical Criteria *only if* the formulating SDO has been accredited to either 1) the Organizational Method of ANSI procedures⁸ or 2) the Accredited Standards Committee Method⁹.

Furthermore, ACIL recommends that participating SDOs should implement procedures to ensure impartiality and openness equivalent to the current FCC rulemaking process. Therefore, ACIL believes that standards developed using the ANSI Canvass Method¹⁰ should be excluded from consideration because all interested parties are not allowed to participate in the actual development of the standard. Under the ANSI Canvass Method, only members of the “consensus body” (i.e., the Canvass List) may comment and vote on the final draft of the standard. ***ACIL opposes the development of the Network Protection Technical Requirements by the ANSI Canvass Method.***

6. The FCC Should Allow The Equipment Approval Process To Be Handled By The Newly Created Telecommunication Certification Bodies (“TCB”) Without Further Deregulation Or Streamlining Of The Present Equipment Approval Process

With regard to paragraph 63 of the NPRM, ACIL recommends that the current Part 68 Equipment Approval Process be entirely delegated to the newly created Telecommunication Certification Bodies (“TCB”). ACIL's members have been involved in the process of defining and formulating the designation criteria for

⁸ These procedures are available from the World Wide Web site for American National Standards Institute (URL <http://www.ansi.org>). They are titled “Procedures for the Development and Coordination of American National Standards”. Reference section 2.1.1

⁹ Same as footnote above except section 2.1.2.

¹⁰ Same as footnote above except section 2.1.3.

TCBs since January 1999, to assist the FCC and the National Institute of Standards and Technology ("NIST") in implementing the United States ("US")/European Union ("EU") Mutual Recognition Agreement ("MRA"). ACIL members are small businesses with limited funding who in good faith have contributed a great amount of time and resources in assisting the FCC and NIST in this area. Any changes in the FCC Part 68 regulations will have an impact on these small businesses and should be carefully considered.

With the implementation of the TCB program to certify telecommunication equipment the FCC should set a date at which time they will no longer accept applications for certification and require all applications for certification to be submitted to a TCB. This step should be the next step in the privatization of the equipment approval process.

7. The FCC Should Not Streamline Everything All At Once

The equipment approval process appears to be the most burdensome on the Commission's resources. Already in response to the signing of MRAs with other regions, the FCC has deregulated Part 68 by implementing the TCB program. This program came into operational effect on June 5, 2000. The program will take over most of the burdens of equipment approval from the FCC Part 68 staff, while still preserving the integrity of the Approval Program with the use of independent third party certifiers. ACIL urges the Commission to wait for the result and assessment of this deregulatory step before attempting to adopt any further Part 68 streamlining. Aspects of the Part 68 program that are not "broken" should not be tampered with at this time. Furthermore, the Commission should only be "deregulating" one aspect at a time. Since the streamlining of the process of equipment approval is being achieved with the TCB program in progress, to try to streamline it further by adopting any other type of approval processes would be confusing not only domestically but also abroad, with our MRA partners.

8. Delays In Part 68 Equipment Approval Process Are No Longer An Issue

The Equipment Approval process is perceived as the main delay in the manufacturer's timeline to market, because it takes the FCC a few weeks to grant certification of products. However, with the TCB program, this step is being reduced to as short as 1-2 days. The time to market delay problems with the Part 68 program are being solved. Therefore, ACIL urges the Commission to wait for a period of time (18 to 24 months) for the TCB program to stabilize and to provide benefit to the marketing of new products before introducing any other change that could adversely affect small businesses, including small manufacturers.

9. The FCC Should Give Careful Consideration To The Impact Of Any Streamlining Process On Small Businesses

Small manufacturers do not have the bargaining power of large-scale suppliers. They rely on an Equipment Grant having the force of law from the FCC to be accepted in the market place, not just domestically, but also abroad. ***A Part 68 Grant carries with it the United States Government's weight that no Self-Declaration Certificate can replace.*** Overseas, American products with an accompanying FCC Part 68 Grant Certificate based on the FCC Part 68 Approval process are often accepted with no further proof of conformity assessment compliance. This is of crucial importance to small manufacturers who do not have multi-national offices and in-country presence and influence. Since the small manufacturers do not have the bargaining power of large suppliers vis-à-vis domestic and foreign distributors/users, they will face discrimination on their Self-Declaration of Compliance Certificate and may be required to undergo additional in-country testing or approval procedures that are avoided today because of ***the weight and importance of the Part 68 Grant.*** ACIL urges the FCC to comply with Congressional Law in carefully evaluating the effect on small business entities of any regulatory change before further streamlining of the Part 68 program.

10. The TCB Program Is The Best Way To Ensure Independence In The Application Of Technical Rules Developed By Private Sectors

As the Commission privatizes the formulation of the Network Protection Technical Requirements/regulations to trade associations/standards development organizations, the application of the developed rules in the approval process is best served by independent entities. The Commission should use the existing TCB program in the Part 68 Equipment Approval Process as a check and balance process so that the technical requirements used with the force of law are not written by the same private entity who is also making the decision to apply them. When the FCC is doing the approval, the rules can be developed by a private entity with FCC's oversight. If the FCC is to delegate or streamline the approval process, there should be an independent third party involved in order to avoid the situations of "the rabbit watching the lettuce". ACIL believes that most manufacturers will do the right thing; however, there will be entities that will circumvent the process if there is not a check and balance system to ensure a level playing field for everyone, especially when the geographical boundaries are outreaching.

11. The FCC Must Step Up Enforcement

With regard to paragraph 90 of the NPRM, ACIL believes that the FCC must be committed to play the very important role of enforcing compliance. ACIL encourages the FCC to retain and honor the traditional role of the Commission, which is to ensure the public welfare and protection with regard to telecommunications equipment and services. ACIL believes that without the Commission's willingness to fulfill the responsibility of enforcement and oversight, while allowing deregulation and privatization of Part 68, the integrity of any adopted system would be compromised.

12. The FCC Must Retain Direct Jurisdiction Over Requirements Dealing With Disabilities And Consumer Protection

With regard to paragraph 29 of the NPRM, ACIL supports the FCC's decision to retain direct oversight of rules concerning hearing aid compatibility (HAC),¹¹ volume control,¹² and consumer protection¹³. Furthermore, ACIL suggests that the approval of equipment having features that fall under the jurisdiction of these rules continue to be performed by either the FCC or a TCB.

13. The Maintenance of a National Database of Certified Equipment Can Be Performed by TCBs With Support From The TCB Council

ACIL believes that it is no longer necessary for the FCC to maintain a central database of approved or certified equipment. The responsibility of maintaining a database of certified equipment should be delegated to each individual TCB. If it is determined necessary to have a central database, then each TCB should be responsible to submit the data to the keeper of the database. ACIL is acting as the secretariat of the TCB Council, a legal non-profit entity that has been formed to support the implementation of the TCB program. The TCB Council could act as a central point for the distribution of an electronic database of all certified equipment.

14. Registration Numbering and Labeling

ACIL agrees that some form of unique identifying label is required. Such a label will aid in the enforcement activities of the FCC and will provide a mechanism to the network providers that a specific piece of terminal equipment is certified. It is not necessary to continue with the same registration number format that is used

¹¹ 47 C.F.R. § 68.4.

¹² 47 C.F.R. § 68.318 (c), *adopted pursuant to* 47 U.S.C. § 227.

¹³ 47 C.F.R. § 68.318 (d), *adopted pursuant to* 47 U.S.C. § 227, 47 C.F.R. § 68.318 (e), *adopted pursuant to* 47 USC § 226.

today. The issue of the registration number format should be addressed by an SDO and implemented as an administrative procedure by the TCBs.

CONCLUSION

ACIL supports the Commission's efforts in this NPRM to streamline the formulation of technical requirements in order to allow for a timely inclusion of new technologies in Part 68. However, ACIL believes that for any system to function properly the Commission must be committed:

1. To redirect toward enforcement resources that are freed up from the equipment approval processes being handed to the Telecommunication Certification Bodies, in order to preserve the integrity and the long-term viability of the proposed system.
2. To maintain the Part 68 certification program carried by third parties, such as the TCB program, so that manufacturers can continue to rely on the Part 68 Grant as a means of acceptance for import into other countries.
3. To preserve the impartiality that only the FCC, mandated with the protection of the Nation's Telephone Networks, can provide in any process involving private entities so that there is an appropriate balancing of competing interests.

Respectfully submitted,

ACIL

By: _____

Joan Cassedy
Executive Director

June 23, 2000